IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Appeal No.817-DB of 1997
Date of decision: 15.02. 2007

Rajinder @ Dhamal and others.

-----Appellants.

Vs.

State of Haryana

-----Respondent.

AND

Criminal Revision No.1224 of 1997

Taj Singh

-----Appellant.

Vs.

Rajinder @ Dhamal.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mrs. Baljit K. Mann, Advocate
for the appellants.

Mr. S.S. Narula, Advocate
for the complainant.

Mr. J.S. Toor, Addl. A.G., Haryana
for the respondent.

Adarsh Kumar Goel, J.

This order will dispose of Criminal Appeal No.817-DB of 1997 filed by the accused against their conviction and sentence and

Criminal Revision No.1224 of 1997 filed by the complainant for enhancement of sentence and award of compensation.

The appellants challenge their conviction under Section 302/149 IPC, for which, they have been awarded sentence to undergo life imprisonment and to pay fine of Rs.1,000/- and in default, to undergo further RI for four months; under Section 148 IPC, for which, they have been sentenced to undergo RI for one year; under Section 323/149 IPC, for which, they have been sentenced to undergo RI for six months; under Section 324/149 IPC, for which, they have been sentenced to undergo RI for one year and under Section 325/149 IPC, for which, they have been sentenced to undergo RI for three years and to pay fine of Rs.500/- and in default, to undergo further RI for two months. All the sentences have to run concurrently.

FIR (Exh.PF/2) was registered on 19.12.1992 at 11.05 A.M. at Police Station Rohtak, in respect of the occurrence which took place at 7.30 A.M. in Village Dulhera at a distance of 18 kms. from the police station. Version in the FIR recorded on the statement of Taj Singh (PW-3) son of Puran Mal , brother of the deceased Ishwar Singh, is that the complainant-party had taken seven killas of land on lease, in auction, from the Panchayat and had also installed tubewell in that land adjacent to the passage. Accused Hoshiar Singh son of Roopa (who died during the trial) had also taken adjoining land from the Panchayat. Earlier the complainant party and the accused party had given bids for the Panchayat land and the complainant party was successful. For this, the accused nursed a grudge. One day prior to the occurrence, on 18.12.1992 at 5 P.M., when Taj Singh and Ishwar

Singh were present in their fields, Dhamal, accused son of Hoshiar Singh met them and asked them why they had fixed kikkar sticks adjacent to their field. He started removing the said fencing. Both the parties exchanged hot words. Dhamal said that he will not permit the complainant party to fix the fencing. Both the sides went to their respective houses. On the next day, at 7.30 A.M., Taj Singh, his brother Ram Phal (PW-5) and Ishwar-deceased and his counsins Azad Singh (PW-4) (Azad Singh of the same name is accused also) and Krishan went to their land to irrigate the same. Ishwar and Azad were getting ready to operate the tubewell. Taj Singh and Krishan (there is accused Krishan by same name also) were standing near the tubewell. Hoshiar Singh armed with axe, Dhamal armed with Pharsa, Rajbir, brother of Dhamal armed with Pharsa, Krishan, brother of Dhamal armed with Jelly, Darshan, brother of Dhamal armed with Jelly and Azad, brother of Dhamal (different from Azad Singh, complainant) armed with axe came to the tubewell of the complainant and started abusing, saying that they will teach the complainant-party a lesson for bidding for the Panchayat land and also for fixing the fencing. Rajbir gave a Pharsa blow on the left wrist of Ishwar, Krishan gave a Jelly blow on the left foot of Ishwar and Dhamal inflicted Pharsa blow on the neck and chin of Ishwar (this proved to be fatal injury). Azad, Krishan and Ram Phal of the complainant party rushed to rescue Ishwar. Hoshiar Singh inflicted axe blow on the head and left wrist of Azad (complainant), Azad accused inflicted 3/4 axe blows on the back of Azad (complainant), Krishan inflicted lathiwise blows with Jelly on the head of Azad, Darshan gave Jelly blow on the right arm and near left

arm-pit of Krishan, Krishan caused Jelly blow on the right thigh and left arm-pit of Azad, Rajbir inflicted Pharsa blow on the back of Krishan and Hoshiar Singh inflicted axe blow on the left hand of Ram Phal. Taj Singh raised an alarm, on which, Dhamal etc. ran away. He found that Ishwar had died. Taj Singh left Raje son of Bhoop Singh near the deadbody of Ishwar and sent injured complainants to Civil Hospital, Bahadurgarh and started proceeding towards police station for lodging the report. On the way, he met PW-10 Mange Ram, SHO at Bus Stand of Village Dulhera. The complainant-party in self defence, uprooted pegs from the dol (border) of the field and caused injuries to the assailants. This statement was recorded at 10.15 A.M. by Mange Ram and the writing was sent for lodging of formal FIR. A copy of special report was received by the Area Magistrate at 2.35 P.M.

PW-10 Mange Ram went to the place of occurrence; got the scene of occurrence photographed; prepared inquest report (Exh.PD); picked up bloodstained earth; took into possession three pairs of chappals, a white muffler and two wooden pegs; prepared rough site plan; sent the deadbody for post-mortem and recorded statements of witnesses. He deposited the case property with the MHC at the Police Station. Thereafter, investigation was handed over to SI Ishwar Singh (PW-6). He submitted final report to the Court.

Post-mortem examination on the deadbody of Ishwar Singh was conducted on 20.12.1992 at 11 A.M. by Dr. K.C. Aggarwal, PW-1, who found following injuries on the deadbody:-

"1. Obliquely placed incised wound with bruised margins situated over the lateral aspect of left side of neck and pinna of the left ear. It was situated 7 cm. above the base of the neck. Lower part of the pinna in line of the trangus was cut. The wound was measuring 12 cm. X 3½ cm. X 6 cm. Deep. Haemotoma was present. Muscles of the region along with the external jugular veil and body of the first cervical vertebra was also cut. Underline spinal cord was lacerated and haematoma was present. Part of lower mastroid process left side was also cut. Haematoma was present.

2. Incised wound with bruised edges 7 x 3½ cm. situated over the posterior aspect of left writst joint and left fore-arm. The wound was obliquely placed, starting from the wrist joint and then going upward laterally underline bone i.e. Radius and ulna were cut. Haemotoma was present.

3. Superficial incised wound 6 cm. X 1 cm. on the anterior aspect of right upper arm, 3 cm. above the right elbow joint. Haematoma was present and there was a corresponding cut on shirt.

4. Incised wound with bruished edges 6 x 2 cm. over the lower mandible right side starting from the midline and then going to the right. Underline right mandible was cut. Haematoma was present.

5. Incised wound 4 cm. x ½ cm. over the front of left leg, middle half, 15 cm. below the left knee joint. Underline tibia bone was cut. Haematoma was present."

According to him, death took place on account of shock and haemorrhage, as a result of injuries which were ante mortem in

nature and sufficient to cause death in the ordinary course of nature. Probable time between death and post-mortem was 36 hours. He further opined that injury No.5 could not be by Jelly.

Dr. Vijay Gupta (PW-12) examined Ram Phal (PW-5) on 19.12.1992 at 8.45 A.M. and found following injuries:-

> "On local examination, 6 cm. x 4 cm. x 1.5 cm. incised wound oblique in direction on left fore-arm on dorsal aspect was present and profused bleeding was there."

On the same day at 9.15 A.M., he examined Krishan son of Bhim Singh (of the complainant's side) and found following injuries:-

1. .5 cm. x .2 cm. at a distance of 4 cm. .2 cm. x .1 cm. x .2 cm. two lacerated wounds on axillary region.
2. 2 cm. x 2 cm. red coloured bruise on dorsal aspect of right arm in middle.
3. 6 cm. below and lateral to inferior angle of left scapula. .2 cm. x .2 cm. X .2 cm. which was lacerated.
4. 6 cm. x .2 cm. oblique in direction on left scapular region.
5. 4 cm. abrasioon on right calf region.
6. 4 cm. abrasion 6 cm. lateral and below injury No.5.
7. .5 cm. x .5 cm. skin peeled off at bentral aspect of left hand area of middle and index finger."

He also examined Azad Singh son of Bhim Singh (of the complainant's side) at 9.45 A.M. and found following injuries:-

"1. 6 cm. x 2 cm x 2 cm. 'J' shaped incised wound on left fore-arm just above wrist joint. On dorsal medial aspect. Ulnar bone fractured. Subjected to x-ray.

2. 1 cm. x .5 cm. abrasion in ring finger on left hand in the middle.

3. 4 cm. x 1 cm. skin peeled off and 1 cm. x .2 cm. x .2 cm. lacerated wound on index finger of right hand lateral aspect.

4. 1 cm. abrasion on right fore-arm.

5. 12 cm. x .2 cm. abrasion on back extending on both scapular area oblique in direction.

6. 2 cm. below injury no.5, 6 cm. x. .3 cm. abrasion oblique in direction.

7. 3 cm. below injury no.6, 6 cm. x .4 cm red coloured burise.

8. 6 cm. below injury no.7,6 cm. x .2 cm. abrasion. Injury No.7 and 8 on right side.

9. 6 cm. below upper end of left hip bone .5 cm. x .5 cm. wound on glutiar region.

10. 5 cm. below and lateral to injury no.9 also same size injury.

11. 14 cm. below anterior superior illiac spine. 5 cm. x .5 cm x .5 cm wound on right thigh.

12. 4 cm. x .2 cm. x .2 cm incised wound on scalp on left side. 9 cm. from the root of left ear. 8 cm. from left eye brow. 4 cm. from scalp line."

It may also be appropriate to notice the defence of the accused persons who claimed that Dhamal-accused, Krishan-accused, Rajbir-accused and Azad Singh-accused had also received injuries. They were examined by Dr. A.L. Bajaj, DW-1, Medical

Officer, General Hospital, Fatehabad on 19.12.1992 at 11.20 A.M. and following injuries were found

On Dhamal Singh:-

"1. An incised wound 2x2-1/2" on the top of left shoulder. Fresh bleeding was present. Advised opinion of Surgeon of Ortho.

2. A lacerated wound on the right elbow 3/4" x 1/2" on lateral aspect. Advised opinion of Ortho.

3. Multiple abrasions on the index, middle, ring and little finger of left hand. Advised opinion of Ortho. Surgeon.

4. Any other injury, if detected on examination by specialist."

On Krishan:-

"1. A lacerated wound on the head 3/4" to the left of mid line starting 2-1/2" behind the hair line and going posteriorly. Advised opinion of Surgeon. Size of wound is 2 ¾ x 1/2".

2. An incised wound ¾" x ½" on the radial border of left fore-arm 2" above the left wrist joint. Opinion of Ortho. Surgeon was advised.

3. Patient complained of pain in the left arm. Opinion of Orth. Surgeon was advised.

4. Diffused swelling in the right fore-arm near elbow on posterior aspect. Opinion of Ortho surgeon was advised.

5. A lacerated wound 1" x 1/2 " on the left foot on lateral part of dorsal aspect . Advised opinion of Ortho. Surgeon.

6. Any other injury if detected by specialist.

On Rajbir:-

"1. A lacerated wound 1 ¾" x 1/2" on the right pareital area of posterior part 2 ¾" above the top of right pinna. Advised opinion of Surgeon.

2. An abrasion 1 ¼" x 1/2" on the right fore-arm in upper part of lateral aspect. Advised opinion of Ortho Surgeon.

3. Two abrasions on the left iliacares on lateral aspect of the size of 1 ¾ x ½ and 2" x ½. Advised Surgeon opinion.

4. Any other injury is detected by specialist.

5. An abrasion ¾ x ¾ in the forehead. Advised opinion of Surgeon."

On Azad Singh:-

"1. There was a lacerated wound on the upper part of fore-head in mid line of the size of 1 x 1/4". Advised opinion of Surgeon.

2. There is a lacerated wound 1" x 1/2" on the back of right arm 4-1/2" above the tip of right elbow. Advised opinion of Ortho Surgeon.

3. Patient complained of pain in the left thigh just above the knee.

4. Any other injury detected by specialist."

According to the said doctor, injury No.2 on Krishan and injury No.1 on Dhamal could be self-inflicted.

The accused Hoshiar Singh was arrested on 20.12.1992 by ASI Ram Chander, PW-11 who made a disclosure-statement leading to recovery of kulhari. PW-6 Ishwar Singh, SI on 20.12.1992, arrested Krishan, Dhamal, and Azad Singh who made their disclosure-statements, leading to recovery of Jelly, Pharsa and a Kulhari. On 26.12.1992, ASI Attar Singh (PW-7) arrested Darshan Singh and Rajbir Singh who made their disclosure-statements, leading to recovery of Jelly and a Pharsa. Weapons of offence were sent to

FSL, Madhuvan and as per the report received, human blood was detected on bloodstained earth, kurta and pyjama of the deceased, Pharsa of Dhamal-accused, kulhari of Hoshiar Singh and Jellies of Darshan Singh and Krishan. Blood was not detected on Pharsa of Rajbir Singh and Kulhari of Azad Singh.

After filing of the challan, the accused were charge-sheeted for having caused death of Ishwar and for having caused injuries to Ram Phal, Krishan and Azad Singh after forming an unlawful assembly with a common unlawful object. The accused claimed trial.

The prosecution led its evidence and examined 12 witnesses apart from relying upon the affidavits (Exhs.PA, PB and PC).

In their statements under Section 313 Cr.P.C., the accused admitted that Panchayat land was leased out to the complainant party and some of the said land was leased out to the accused party. Presence of PWs Azad Singh, Krishan, Ram Phal, Taj Singh and deceased Ishwar Singh was admitted. Accused, however, gave different version to the effect that on 18.12.1992, Dhamal-accused had gone to his field and found that the complainant party had fixed kikkar fencing on the field of the accused. He objected to this. Ishwar Singh alone was present on that day. Dhamal, accused gave slap blows to Ishwar Singh. On the next day, Dhamal, Azad Singh, Rajbir Singh and Krishan, accused went to their field where Taj Singh and Azad Singh, PWs armed with Jellies, Krishan PW armed with Kulhari, Ram Phal armed with lathi and Ishwar Singh armed with

Pharsa attacked the accused persons and caused them injuries. Ishwar Singh gave a lalkara that family of the accused should not go alive and gave Pharsa blow on the head of Dhamal, which fell on the left shoulder of Dhamal. Taj Singh, accused gave lathi blow on the left elbow of Dhamal. The accused persons ran towards western side, but they were way-laid and more injuries were caused in the field of Rajender son of Surjan. The accused in their self-defence inflicted injuries on the complainant party. Hoshiar Singh and Darshan Singh were not present.

After considering the evidence on record, the trial Court held the case of the prosecution to have been proved beyond reasonable doubt.

Following findings have been recorded:-

(i) The occurrence was admitted by the accused persons and only presence of Hoshiar Singh, (since died) and Darshan-accused was denied; Presence of complainant party was also admitted; Taj Singh (PW-3), Azad Singh (PW-4) and Ram Phal (PW-5) were all injured witnesses whose testimony was reliable. They clearly implicated all the six accused.

(ii) FIR was prompt, having regard to the time for which the occurrence may have continued and time taken in sending the injured to the hospital. The occurrence commenced at 7.30 A.M. and Taj Singh met Mange Ram (PW-10) at 9.15 A.M. and got recorded his statement which was concluded

at 10-15 A.M. This statement reached the Police Station at 11.05 A.M.

(iii) Injuries found on the deadbody of Ishwar and on the persons of injured PWs corroborated the version of eyewitnesses; defence plea of injuries having been caused with wooden pegs was not reliable; the deceased had five incised wounds, Ram Phal had one incised wound and Azad Singh had two incised wounds.

(iv) Motive was established. Even as per the defence version (given by Dhamal), there was altercation on the previous day.

(v) Recovery of weapons from the accused having human blood thereon further corroborated the prosecution version.

(vi) There was no substantial delay in delivering the copy of FIR to the Magistrate; there was no reason to infer ante timing of FIR.

(vii) Genesis of occurrence was admitted by the defence. Cause of occurrence was removal of fencing put up by the complainant party.

(viii) There was no reason to accept the plea of self-defence; Rajinder @ Dhamal-accused appeared as a defence witness, but could not substantiate the plea of self-defence as he could not explain the injuries on the complainant party.

(ix) Accused suffered only simple injuries while on the complainant's side, Ishwar suffered fatal injuries and Azad

Singh, PW suffered grievous hurt with sharp weapon apart from simple injuries suffered by Azad Singh, Ram Phal, and Krishan.

(x) The accused persons came armed with deadly weapons like Pharsas, Jellies and Kulharis and they were the aggressors. Injuries on the accused persons were simple and were caused by blunt weapons, which has been explained by the complainant party to have been caused by wooden pegs uprooted from the spot itself. Thus, the complainant party was unarmed.

(xi) Injuries on the accused persons were duly explained. One incised wound each on Dhamal and Krishan could have been self-suffered as admitted Dr. A.L. Bajaj (DW-1). The said wounds were not on vital parts. Other injuries which were simple and superficial, could also be self-suffered. One injury each was exaggerated by DW-1 on the person of accused persons by describing as “any other injury, if detected, by specialist”.

(xii) Though for grievous hurt caused to Azad Singh, PW, case under Section 326/149 IPC was made out, but since charge had been framed under Section 325/149 IPC, amendment of charge at the end of trial, was not called for.

We have heard learned counsel for the parties and perused the record.

Contentions raised on behalf of the appellants are as under:-

(i) There was delay in lodging the FIR and the time purported to have been mentioned in the FIR had been ante timed, having regard to the fact that the report reached the Illaqa Magistrate at 2.45 P.M.

(ii) The FIR was, in effect, registered after receiving medical reports with a view to mathematically distribute the injuries to all the accused persons. Distance between the police station and the Court was only 2 kms. and jeep was available. The Investigating Officer had reached for preparing inquest report at 10 A.M., before recording of the FIR.

(iii) There was a free fight, wherein six persons from the accused side and five persons from the complainant side participated. Thus the case will fall under exception to Section 300 IPC.

(iv) The place of occurrence was not complainants' field and thus, the accused could not be the aggressors.

(v) Motive was stale as bids had taken place long back and kikkar tree fencing could not be a motive for causing the death.

(vi) Injuries on the accused persons were also with sharp-edged weapons and one of the accused received head injury.

(vii) Darshan-accused was not injured and his presence on the spot was doubtful. The prosecution had exaggerated the version to implicate all the sons of Hoshiar Singh.

(viii) Only injuries attributed to the deceased are by Rajinder @ Dhamal on the neck and Rajbir on the wrist and Krishan on foot. The fatal injury is attributed to Rajinder @ Dhamal. Injuries attributing to Rajbir and Krishan are simple injuries on the deceased. Darshan and Azad are not attributed any injury to the deceased.

Learned counsel for the State opposed the submissions and supported the conviction and sentence of the appellants.

Learned counsel for the complainant suggested that Ishwar having died and Azad Singh, Krishan and Ram Phal having received injuries, appropriate sentence of fine should be imposed or compensation awarded.

After considering the rival submissions and perusing the record, we are of the view that case of the prosecution has been fully proved and the plea of private defence or free fight cannot be accepted. However, question about the nature of offence and sentence to be awarded to the appellants will be considered in the later part of the judgment.

PW-3 Taj Singh who is brother of the deceased Ishwar and injured Ram Phal, is an eyewitness. He has deposed that on the previous day, he and Ishwar were spraying fertilizer in their field when Dhamal-accused objected to the fencing set up by them, which led to

an altercation. Dhamal threatened that he will remove the fencing. On the next day, he along with his brother Ram Phal and Ishwar and cousin Azad Singh and Krishan again came to the field and the accused persons started abusing them on the issue of fencing and for having given the bid in the Panchayat. All the accused persons caused injuries in the manner already mentioned. Nothing meaningful could be elicited from him in the cross-examination. His version is forthright and truthful and is corroborated by injuries on the deceased Ishwar as well as injuries on Krishan, Azad and Ram Phal as well as recoveries of weapons from the accused persons. There is no dispute about their identity. FIR was prompt. The occurrence remains admitted. Presence of the complainant party including Taj Singh (PW-3) remains undisputed. Plea of the complainant party being aggressor, is not tenable. Injuries on the accused persons have been duly explained. PW-4 Azad who is an injured witness has also given the same version. His testimony also remains unshaken in cross-examination. His statement was recorded by the police on the date of occurrence itself. PW-5 Ram Phal also deposed about the assault by the accused persons. He is also an injured witness and his testimony also remained unshaken in the cross-examination. Mange Ram (PW-10) who recorded the statement of PW-3 Taj Singh, leading to registration of FIR and who prepared the inquest report, deposed that Taj Singh met him at 9.15 A.M. and his statement was concluded at 10.15 A.M. He reached the spot at 10.30 A.M. He directed SI to investigate the matter further. PW-6 SI Ishwar Singh reached the hospital and recorded the statements of Ram Phal and Azad Singh.

He arrested the accused Krishan, Azad and Dhamal and effected recoveries of weapons after recording their disclosure-statements. PW-7 Attar Singh arrested the accused Rajbir and Darshan and effected recoveries of their weapons after recording the disclosure-statements. PW-11 Ram Chander arrested Hoshiar Singh and effected recovery of weapon from him in pursuance of his disclosure-statement. There is, thus, direct ocular version which is corroborated by medical evidence on record. There is no reason whatsoever to reject the version given by the prosecution witnesses who are consistent and truthful. Recoveries are also clearly proved.

No capital can be made from the fact that special report was delivered at 2.35 P.M. when the FIR was registered at 11.05 A.M./11.50 A.M. Delay of about 2 hours, cannot be held to be a long delay. The injured were already in the hospital. It cannot be said that only after medical examination or after inquest report, version was given in the FIR. Such an argument can have no weight, in cases, where there is direct evidence, truthfulness of which is beyond doubt. It could not be said that there was no motive, nor absence of motive can be treated as material, when direct evidence is available. Injuries on the accused persons were simple injuries and could be self-suffered and have been duly explained in the FIR itself. It stands clearly established that having regard to the nature of injuries on both sides and all the circumstances of the case, the accused were the aggressor party and not the complainant.

It is well settled that burden to prove existence of right of private defence is on the accused. Such a plea can be accepted only

if the defence version is probable, showing that the accused had reasonable apprehension from the complainant party. Though number of injures is not conclusive, the same has to be taken into account to assess whether the accused had any genuine apprehension. In the present case, the complainant side was unarmed while the accused party was clearly armed, which is shown by the pattern of injuries on the complainant side and also recovery of weapons. The principles dealing with the right of private defence have been categorically laid down by the Hon'ble Supreme Court, inter-alia, in ***State of Madhya Pradesh v. Ramesh*** AIR 2005 SC 1186 (Paras 10 to 17).

Plea of sudden fight is equally tenable. Such fight implies mutual provocation and blows on each side. A situation must exist in which both sides can be blamed for the occurrence. There must be mutual provocation and aggravation. Mere sudden quarrel without pre-meditation cannot be equated to sudden fight. Principles in this regard are well settled and have been reiterated in the judgment of the Hon'ble Supreme Court in ***Sachchey Lal Tiwari v. State of Uttar Pradesh*** 2004 SC 5039 (Para 9).

We now come to the question of nature of offence and sentence.

It is necessary to first determine whether all the accused had common intention or common object of causing death of Ishwar. It is well settled that any act in furtherance of common intention renders all the persons sharing such intention liable, irrespective of any individual overt act. Individual role can, however, be seen with a

view to examine whether a particular accused had shared the common intention of the other. Common intention may develop on the spot also, but must precede the act constituting offence. Common intention must be in respect of the ultimate act, for which, the accused is sought to be punished. These principles have been elaborately dealt with by the Hon'ble Supreme Court in ***Suresh v. State of U.P.,*** **AIR 2001 SC 1344** (Paras 34 to 54).

In the present case, even though all the six accused came with their respective weapons and declared that they will teach the complainant party a lesson for bidding for the Panchayat land and also for fixing the fencing, it cannot be inferred that they had planned for killing. The very first blow was given by Rajbir on the wrist of the deceased and the next blow was given by Krishan on the foot of Ishwar. Thus, these two persons who gave one blow each, followed by blow given by Dhamal on the neck and chin, did not depict prior planning to kill. Hoshiar Singh, Azad and Darshan did not cause any injury to the deceased Ishwar. The pattern of assault does not show sharing of common intention by all the accused in causing death of Ishwar. Dhamal-accused who caused the fatal blow, has to be attributed intention of causing the injury on the neck, which was sufficient to cause death. He alone has to be held guilty for causing the death of Ishwar while Rajbir and Krishan can be held responsible for causing injuries on Ishwar, but not for causing death of Ishwar. Hoshiar Singh, Azad and Darshan could not be attributed common intention or common object of causing death of Ishwar. Thus, while upholding conviction of Rajinder @ Dhamal under Section 302 IPC,

for causing death of Ishwar, the appellants Rajbir, Darhsan, Krishan and Azad Singh have to be given benefit of doubt on the issue of common intention for causing death and their conviction under Section 302/149 IPC is liable to be set-aside.

All the accused can, however, be held to be sharing the common object of causing injuries to deceased Ishwar as well as to PW-5 Ram Phal, Krishan son of Bhim Singh, PW-4 Azad Singh son of Bhim Singh. Their conviction under Section 323/149 IPC, 324/149 IPC as well as 325/149 IPC and sentence of imprisonment awarded to them have to be, thus, be upheld.

We are also in agreement with learned counsel for the complainant that sentence of fine is liable to be enhanced. Apart from injuries on deceased Ishwar, there is one injury on Ram Phal, seven injuries on Krishan and 12 injuries on Azad Singh.

In ***Hari Krishan and State of Haryana v. Sukhbir Singh*** AIR 1988 SC 2127, the Hon'ble Supreme Court referring to Section 357 of the Code of Criminal Procedure, observed:-

> **"10.** ..... This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.
> **11.** The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one

> accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The Court may enforce the order by imposing sentence in default."

The Hon'ble Supreme Court in that case awarded compensation of Rs.50,000/-.

We have held all the appellants responsible for causing injuries. In the circumstances of the present case, we are of the view that all the five appellants should be made liable to pay Rs.50,000/- compensation, which may be shared equally by the four injured persons, Krishan, Azad and Ram Phal and heirs of Ishwar-deceased. Accordingly, apart from the sentence mentioned above, the appellants are directed to pay compensation of Rs.50,000/- each, which may be deposited before the trial Court and the trial Court may disburse the same to the victims in the manner indicated above. In default of payment of compensation, all the appellants will undergo sentence of further R.I. for one year each.

The appeal and revision stand disposed of in the above manner.

(ADARSH KUMAR GOEL)
JUDGE

February 15, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**